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SUBJECT: PERU'S IPR NEGOTIATOR RESIGNS, BUT THEN STAYS ON

11. (SBU) Summary. Infighting between the Ministry of Trade (Mincetur) and Indecopi (Peru's IPR administrative agency) over Peru's intellectual property rights position in the FTA negotiations has become increasingly heated. Following the resignation of Peru's lead IPR negotiator and Indecopi employee, Luis Alonso Garcia, both institutions have gone public to air their differences. In an effort to quell the rift, Prime Minister Carlos Ferrero decided that Garcia should remain the lead IPR negotiator, but would follow Indecopi's direction. While the situation appears resolved for the moment, internal debates over the data exclusivity protection issue will likely require President Toledo's intervention. End Summary.

Mincetur and Indecopi at Loggerheads

12. (SBU) For months, Mincetur and Indecopi officials have disagreed privately on Peru's IPR policy during the FTA negotiations. Notably, Indecopi is against providing data exclusivity protection for pharmaceutical and agrochemical products. Before the Cartagena FTA round, Indecopi had prepared a document that it had intended to publish; Mincetur successfully quashed the report by convincing President Toledo to intercede. In recent days, both Indecopi President Santiago Roca and Trade Minister Alfredo Ferrero have gone public with their differences.

Lead Negotiator Resigns...

13. (U) In mid-February, Indecopi privately informed Mincetur that it did not support Mincetur's views on IPR issues and was withdrawing support from its IPR negotiator in the FTA negotiations. On February 19, Luis Alonso Garcia, Peru's lead IPR negotiator and Indecopi employee, resigned in protest of Indecopi's actions. According to a Pharma contact, Garcia (who supports the Mincetur view) did not want to be criticized later as the GOP representative who "lost" the data exclusivity issue. Garcia, he said, seeks GOP political support.

...But is Reinstated

14. (SBU) Prime Minister Carlos Ferrero met with Chief FTA Negotiator Pablo De la Flor and Santiago Roca for two hours on February 22 to discuss Garcia's resignation. The Prime Minister decided that Garcia would stay on as lead negotiator but take direction from Indecopi. If Mincetur wants Indecopi to modify Peru's IPR policy, Mincetur must formally notify Indecopi and assume responsibility. Mincetur is not satisfied with the Prime Minister's decision. De la Flor told us that he believes this arrangement is untenable, as Indecopi (and thus the lead IPR negotiator) would not accept Mincetur direction. Roca told us that it would be better if Mincetur hired Garcia outright, but indicated that Mincetur was not ready to take that step.

IPR Chief Rocking the Boat

15. (SBU) Indecopi President Santiago Roca (who holds a PhD in economics from Cornell) told EconCouns on February 24 that Peru needed to increase its technological capabilities, and that the FTA should be the vehicle to reach that objective. Roca said that the FTA and IPR chapter should help foster the development of new technology in Peru. EconCouns noted that science and technology cooperation is under consideration, but ultimately it is the private sector with new investment that advances a country's technology. Roca suggested that a separate IPR, science, and technology agreement, not part of the FTA, would be more beneficial for Peru.

16. (SBU) While claiming he supports the FTA, Roca stated that Peru is not at the same level as the United States on intellectual property issues, and thus should not commit to

long-term protection for American products without something in return. Extending data exclusivity for American products, he argued, would largely benefit the United States, not Peru.

Mincetur: This Guy is Bad News

17. (SBU) Mincetur officials, on the other hand, privately recognize that Peru needs to provide data exclusivity protections. Pablo de la Flor, Peru's lead FTA negotiator, told EconCouns on February 23 that Peru would move closer to the U.S. IPR position, but advised that the recent spat has made his job more difficult. He noted that Peru did not back Colombia and Ecuador's proposal in Cartagena for a three-year period of data exclusivity because of difficulties with Indecopi, which does not support the idea.

18. (SBU) De la Flor noted that several months ago Santiago Roca had sent President Toledo a letter recommending that the IPR chapter be dropped from the FTA negotiations. The Vice Minister never saw the letter, but he visited Roca when he heard about it. De la Flor described Roca as ill informed on IP issues and surrounded by advisors who do not believe in pharmaceutical patent protection. A series of four increasingly nasty letters between Trade Minister Ferrero and the Indecopi President followed.

19. (SBU) De la Flor finds puzzling Indecopi's sudden change of heart 10 months into the FTA negotiations, noting that Indecopi appointed Garcia as the lead IPR negotiator for Peru prior to the start of the FTA negotiations. De la Flor did not see a solution to the problem, and the departure of Roca from Indecopi is unlikely since he is a close friend of President Toledo.

Private Sector Critical of Indecopi Chief

10. (SBU) Members of the private sector lament the public squabbling and are concerned that the Mincetur-Indecopi dispute could undermine general support for the FTA, which enjoys more than 70 percent approval in recent public opinion polls. The Indecopi President has been criticized for raising his differences so close to the end of the FTA negotiations. Others have called for President Toledo to get more involved in the FTA process. One Pharma rep told us that the debate is not about substance, but rather a dispute between strong personalities who do not want to be perceived publicly as having caved to U.S. pressure on IPR.

Comment: Toledo Needs to Weigh In

11. (SBU) The sensitive data exclusivity issue has become a political matter that President Toledo will probably have to resolve. Neither Mincetur nor Indecopi wants to be held responsible for having agreed to data exclusivity protection, a U.S. priority, for fear of political criticism. Meanwhile, Mincetur is seeking a meeting with the President to brief him on the FTA negotiations and to get him more involved in the decision-making process.

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